

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

)	
In re:)	
)	Chapter 11
Lamson and Goodnow Manufacturing)	
Company, et al.,)	Case No. 14-30798 (HJB)
)	(Jointly Administered)
Debtors.)	
)	

**SUPPLEMENTAL STATEMENT OF NEWTEK SMALL BUSINESS FINANCING, INC.
IN OPPOSITION TO DEBTORS' CONTINUED USE OF CASH COLLATERAL
AND PROPOSED GRANT OF PRIMING LIENS AND
SUPERPRIORITY TO PROPOSED DIP LENDER**

Newtek Small Business Finance, Inc. ("Newtek"), a secured creditor of the Debtors, by and through its counsel, hereby files its supplemental statement ("Supplemental Statement") in opposition to Debtors' continued use of cash collateral and proposed grant of priming liens and superpriority to proposed DIP lender. Newtek previously filed its initial opposition (Docket No. 19) on August 19, 2014, and restates and relies upon the arguments put therein and further states as follows.

Newtek appeared before Judge Hoffman at the hearing on the Debtors' initial emergency motions for use of cash collateral and for DIP financing on August 19, 2014 and agreed to accommodate the Debtors' request for the use of its cash collateral until September 3, 2014. The terms of this agreement are set forth in the Preliminary Order issued by Judge Hoffman (Docket No. 26) dated as of August 19, 2014.

Budgeting and Cash Collateral

The Debtors have provided some financial information as required by the Preliminary Cash Collateral Order, but the information provided to date does not demonstrate that Newtek is adequately protected for the use of its cash collateral. To the contrary, the most recent actual budgeting information supplied to Newtek's counsel on September 2, 2014 (attached hereto as Exhibit "A") no longer provides for adequate protection payments to Newtek, even though the Debtors' previous budget did provide for adequate protection payments to Newtek (see Exhibit "B" attached hereto and the initial cash collateral budget filed with this court (Docket No. 28) by the debtors on August 21, 2014). This change was pointed out to Debtors' counsel who has indicated that the Debtors intend to make the promised payment.

Moreover, the budgets are internally inconsistent – for example the ending cash balance forecast for the week ending September 6, 2014 in Exhibit A is \$168,171, while the beginning cash balance for the week ending September 13, 2014 is \$235,048 in Exhibit B. This inconsistency was pointed out to Debtors' counsel, but no response has been provided.

Additionally, the Debtor's budget relies on a capital infusion of \$230,000 from DIP Lending during the week ending September 6, 2014 (see Exhibit A), but the monthly payments associated with such a capital infusion are not reflected in the budget (see Exhibit B).

Additionally, the Debtors' projected cash receipts in the first two weeks of the cash collateral budget were \$7,000 and \$45,454 (see Exhibit B), whereas actual cash collections in the first two weeks of this case were \$635 and \$29,861 respectively (see Exhibit A). Although this is a small sample size, a negative 34% variance in cash collections supports Newtek's view that the Debtors' projections are overly optimistic.

Finally, the receipts from accounts receivable turned over from a Newtek affiliate to Debtors appears (see income item “Newtec LOC receipts” in Exhibit B) to be overstated to the extent that the Debtors have not accounted for a significant portion of the turned-over accounts receivable that the Debtors had already collected surreptitiously pre-petition. Newtek believes these receipts are overstated by approximately \$20,000.

In aggregate, if the cash collateral budget attached as Exhibit B were adjusted to reflect the issues outlined above, Newtek believes that the Debtors’ cash balances will become negative by the end of September or early October of this year – even with the proposed capital infusion from DIP Lending.

DIP Priming Liens and Superpriority

Newtek maintains its objection to the grant of any priming liens or superpriority liens against its collateral, because the Debtors have not demonstrated that Newtek is adequately protected. Pursuant to §364(d)(2), the Debtors bear the burden of proof on the issue of adequate protection. Newtek believes that its secured position in all of the Debtors’ business assets including the Debtors’ real estate will not be adequately protected if the Proposed DIP Agreement or DIP Motion were allowed. Courts should be “particularly cautious” when determining whether the existing creditor that is being primed is adequately protected. *See In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996). Additionally, when the issue is one of adequate protection for a secured creditor that is being primed, there must be some realistic assessment of future contingencies which would alter profitability. *See Suntrust Bank v. Den-Mark Constr., Inc.*, 406 B.R. 683, 701-03 (E.D.N.C. 2009)(reversing bankruptcy court’s grant of superpriority liens to DIP lender where secured lender was not sufficiently assured of that it would receive the indubitable equivalence of its existing security due to narrow equity cushion

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Newtek's Collateral

The Debtors have stated in their Cash Collateral Motion that its real property is worth approximately \$2,080,000 based on a broker's opinion of value attached to the Motion as Exhibit D. The real property is subject to mortgages to Newtek and the SBA totaling approximately \$3,100,000. Although the Debtors allege that SBA holds the senior position in the real property, Newtek believes that the SBA may agree that its position is supposed to be subordinate to Newtek's position. The Debtors are marketing the property for sale, but given that the property is a unique 18 acre parcel made up of several buildings, Newtek believes that it will take many months or years to find a buyer willing to pay at or near the listing price of \$2,100,000. It is

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Newtek's equipment appraiser has inspected its equipment collateral, and Newtek expects to have in the next week an updated appraisal.

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In any case, the foregoing collateral is encumbered by secured claims of Newtek and SBA in excess of \$3 million. The Debtors have not demonstrated that the collateral above provides an equity cushion sufficient to adequately protect Newtek and SBA, pay these oversecured creditors interest and service the additional debt to DIP Lending the Debtors are seeking. Until and unless the Debtors make this showing, Newtek submits that this Court should deny the request to provide priming liens and superpriority status to DIP Lending.

Newtek reserves all of its rights, remedies claims and counterclaims, including without limitation, its objections to the use of its cash collateral and terms of any proposed DIP lending facility.

WHEREFORE, Newtek Small Business Finance, Inc. respectfully requests that this Court deny the Debtors' continued use of cash collateral and deny the DIP Motion.

Respectfully submitted,

Newtek Small Business Finance, Inc.
By its attorneys,

Dated: September 3, 2014

/s/ Frank F. McGinn
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In aggregate, if the cash collateral budget attached as Exhibit B were adjusted to reflect the issues outlined above, Newtek believes that the Debtors’ cash balances will become negative by the end of September or early October of this year – even with the proposed capital infusion from DIP Lending.

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Newtek's Collateral

The Debtors have stated in their Cash Collateral Motion that its real property is worth approximately \$2,080,000 based on a broker's opinion of value attached to the Motion as Exhibit D. The real property is subject to mortgages to Newtek and the SBA totaling approximately \$3,100,000. Although the Debtors allege that SBA holds the senior position in the real property, Newtek believes that the SBA may agree that its position is supposed to be subordinate to Newtek's position. The Debtors are marketing the property for sale, but given that the property is a unique 18 acre parcel made up of several buildings, Newtek believes that it will take many months or years to find a buyer willing to pay at or near the listing price of \$2,100,000. It is

worth noting that the Debtors have characterized the property as being inefficient, so Newtek is skeptical that a buyer who can make more efficient use of the real estate will be found quickly.

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Respectfully submitted,

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Dated: September 3, 2014

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Newtek's Collateral

The Debtors have stated in their Cash Collateral Motion that its real property is worth approximately \$2,080,000 based on a broker's opinion of value attached to the Motion as Exhibit D. The real property is subject to mortgages to Newtek and the SBA totaling approximately \$3,100,000. Although the Debtors allege that SBA holds the senior position in the real property, Newtek believes that the SBA may agree that its position is supposed to be subordinate to Newtek's position. The Debtors are marketing the property for sale, but given that the property is a unique 18 acre parcel made up of several buildings, Newtek believes that it will take many months or years to find a buyer willing to pay at or near the listing price of \$2,100,000. It is

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WHEREFORE, Newtek Small Business Finance, Inc. respectfully requests that this Court deny the Debtors' continued use of cash collateral and deny the DIP Motion.

Respectfully submitted,

Newtek Small Business Finance, Inc.
By its attorneys,

Dated: September 3, 2014

/s/ Frank F. McGinn
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

)	
In re:)	
)	Chapter 11
Lamson and Goodnow Manufacturing)	
Company, et al.,)	Case No. 14-30798 (HJB)
)	(Jointly Administered)
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IN OPPOSITION TO DEBTORS' CONTINUED USE OF CASH COLLATERAL
AND PROPOSED GRANT OF PRIMING LIENS AND
SUPERPRIORITY TO PROPOSED DIP LENDER**

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In aggregate, if the cash collateral budget attached as Exhibit B were adjusted to reflect the issues outlined above, Newtek believes that the Debtors’ cash balances will become negative by the end of September or early October of this year – even with the proposed capital infusion from DIP Lending.

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Newtek maintains its objection to the grant of any priming liens or superpriority liens against its collateral, because the Debtors have not demonstrated that Newtek is adequately protected. Pursuant to §364(d)(2), the Debtors bear the burden of proof on the issue of adequate protection. Newtek believes that its secured position in all of the Debtors’ business assets including the Debtors’ real estate will not be adequately protected if the Proposed DIP Agreement or DIP Motion were allowed. Courts should be “particularly cautious” when determining whether the existing creditor that is being primed is adequately protected. *See In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996). Additionally, when the issue is one of adequate protection for a secured creditor that is being primed, there must be some realistic assessment of future contingencies which would alter profitability. *See Suntrust Bank v. Den-Mark Constr., Inc.*, 406 B.R. 683, 701-03 (E.D.N.C. 2009)(reversing bankruptcy court’s grant of superpriority liens to DIP lender where secured lender was not sufficiently assured of that it would receive the indubitable equivalence of its existing security due to narrow equity cushion

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UNITED STATES BANKRUPTCY COURT
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In aggregate, if the cash collateral budget attached as Exhibit B were adjusted to reflect the issues outlined above, Newtek believes that the Debtors’ cash balances will become negative by the end of September or early October of this year – even with the proposed capital infusion from DIP Lending.

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UNITED STATES BANKRUPTCY COURT
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